IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(ORIGINAL SIDE)

Present:
The Hon'ble Justice Rai Chattopadhyay

WPO 593 of 2024

Bikas Chand Dubey
versus
The State of West Bengal and Ors.

For the Petitioner	: Mr. Anjan Bhattacharya
For the State	: Ms. Sonal Sinha : Mr. Gourav Das : Ms. Shabnam Farooqui
For the respondent No. 4	: Mr. Sanjay Kr. Baid
Judgment on	**: 01.10.2026**
Uploaded on	**: 01.10.2026**

Rai Chattopadhyay, J. :-

(1) The present writ petition deals with the issue of approval of appointment of Assistant Teacher of the school. An order of the respondent No.3/District Inspector of Schools (Secondary Education), Kolkata (hereinafter referred to as "the DI"), dated 11.03.2024, has been challenged in the instant writ petition. In the same the DI has refused to approve the petitioner in the post of Assistant Teacher in Commerce in Shree Jain Vidyalaya, Kolkata.

(2) The petitioner seeks that the impugned order passed by the DI be set aside and his appointment be approved in the respondent school

from 23.06.2006 as a Commerce teacher in the Higher Secondary section.

(3) Before proceeding to determine the issue in hand, let the factual background of the case be narrated in a nut-shell. Petitioner was appointed as an Assistant Teacher in Commerce on 09.06.2006, and in pursuance thereof, he joined on 23.06.2006. His appointment was purely temporary basis as a Part Time Teacher.

(4) One Sri Arun Kumar Tewari was an approved Assistant Teacher who had been appointed as Headmaster on 10.06.2006. Against the said vacancy created due to upgradation, the petitioner was appointed on 09.06.2006. Subsequently, petitioner was re-appointed on 29.10.2008 with effect from 01.11.2008. Such appointment was made on probation till one year with the condition that if his services are found satisfactory, he will be confirmed as a permanent Assistant Teacher.

(5) Although the petitioner was appointed in the year 2006 and subsequently confirmed his service with effect from 01.11.2008 but his appointment was not forwarded by the School Authority to the District Inspector of School (SE), Kolkata for approval. Managing Committee of school adopted a resolution in the meeting held on 17.02.2018 wherein petitioner was placed against another vacancy created due to retirement. The minutes of the meeting are as follows:

> ***"Resolution No. 10***
> ***The teacher-in-Charge of the school placed the relevant papers of teachers in connection with their approval of appointment to be forwarded to the District Inspector schools(S.E.).***
> ***The committee after due consideration and discussion at length decided to send the relevant papers for approval as per the Seniority of teachers to avoid any legal procedure. It was further decided to depute the Secretary/Teacher-in-Charge to forward the papers and do the needful in this regard:***

S/N	*Name & Designation*	*Date of Confirmation*	*In whose place appointed*	*Date from which Applied*
1.	*Sri Abhijit Saha, A.T.*	*01.04.2008*	*Sri Arun Kr. Tewari, Asst. Teacher*	*11.6.06*
2.	*Sri Bikas Chand Dubey, A.T.*	*01.11.2008*	*Sri Amar Nath Dubey, Asst. Teacher*	*06.07.17*

(6) The petitioner submitted that the retired Assistant Teacher, namely, Shri Arun Kumar Tewari was an Assistant Teacher of Commerce in H.S. Section of the school and another retired teacher was an Assistant Teacher of Language group. One Shri Abhijit Saha has no qualification of Commerce teacher but his service has been placed against the vacancy of the Assistant Teacher in Commerce and service of the petitioner has been placed against the Assistant Teacher of Language group. The school authority while considering the service of the Assistant Teacher for placement, maintained seniority irrespective of the group or subject.

(7) The petitioner did not satisfy the respondents in getting approval of his appointment and thereby approached this Hon'ble Court by presenting a writ petition being W.P. No. 18 of 2020. This Hon'ble Court disposed of the writ petition on 28.02.2020 by directing DI to pass reasoned order on the application dated 14.05.2018 made by the Secretary of the School. Pursuant to such direction, the DI, on 12.10.2020, heard the petitioner and passed a reasoned order by negating the approval of the petitioner showing various grounds indicated hereinbelow:

"Thereafter, the school authority had submitted relevant papers for placement of service of the petitioner to this Inspection Office on 14.05.2018. It

states, the school authority placed the petitioner having qualification M.Com, B.Ed. in H.S. Section (Commerce).

It appears that the total sanctioned strength of teaching post in 30 (thirty) out of which 24 (twenty four) posts are in Normal Section and remaining i.e. 6 (six) posts are in H.S. Section. At present no. of approved A.T. working Normal Section and H.S. Section is 15 (fifteen) and 12 (twelve) respectively.

According to G.O. 772-Edn(S) dated 08.07.74, B.Com/M.Com is a non-taught subject in Normal Section of the School. There is no Commerce Stream in the Normal Section i.e. Secondary Section as per curriculum of the West Bengal Board of Secondary Education under which the Normal Section or Secondary Section falls.

As per G.O. No. 1691-SE(S) dated 20.09.2001. Govt. in the Education Department permit the authorities of such D.A. getting schools to fill up the vacant post within the sanctioned strength by placing properly qualified teachers already working in the school for the Secondary/Higher Secondary Section but not in receipt of D.A. from the Govt. It is pertinent to mention that the concerned school has already excess approved A.T. in H.S. Section which is beyond the sanctioned strength.

Therefore, further approval of appointment cannot be accommodated in Higher Secondary Section of Shree Jain Vidyalaya.

That the managing committee of the said school shall not forward such papers for placement or approval of service of unapproved A.T. if sanctioned strength of posts does not permit.

Hence, in light of aforesaid provision of existing Rule & Govt. Order, the District Inspector of Schools (Secondary Education) Kolkata is not in a position to consider the petitioner's prayer as he claimed."

(8) The petitioner submits that the staff pattern of the said school supports that the petitioner can be accommodated in the post of Assistant Teacher and the School has enough students to accommodate the petitioner in the place where the petitioner's initial appointment was made. On. 12.09.2005, the DI had reduced the Normal Section teaching post to 24 from 27 including the Headmaster and the total number of sanctioned post of the teacher in H.S. Section has been increased to 06 (six) (Commerce-4, Math-2). By

that means, total post of teaching staff of the School has been increased to 30 (thirty).

(9) The petitioner further submits that the staff pattern of the School shows that four teachers, all approved, are placed in the Commerce section, in which Smt. Madhumita Bhattacharya a MSc. (Economics), B.Ed qualified assistant teacher has been placed in the Commerce group. The approval was made on 01.07.2005. Therefore, the DI in its reasoned order has negated the entry of the petitioner in the list of Commerce teacher by noting that there is no vacancy at present.

(10) The petitioner approached this Hon'ble Court by presenting a writ petition being W.P.O No. 58 of 2021. This Hon'ble Court disposed of the writ petition on 06.02.2024 by setting aside the order of the DI dated 12.10.2020 and directing the DI to afford the petitioner an opportunity of hearing and allow the latter to produce necessary documents. The petitioner submits that the DI had passed a reasoned order on 11.03.2024 and rejected the case of the petitioner leading him to file this writ petition.

(11) In this backdrop, the respondent no. 3/DI has affirmed that initially 30 (thirty) number of teaching post existed in the normal section of the concerned school. After that 03 (three) posts of Assistant Teachers had been converted from Normal section to H.S. section of the school vide office memo no. 1910/M dated 26.10.2002 and 1911/M dated 26.10.2002. By office memo no. 1668/M dated 12.09.2005, the then DI had converted 03 (three) more posts of Assistant Teachers from Normal section to H.S. section of the school. Following is the relevant portion from memo no. 1668/M dated 12.09.2005:

"Hence the total no. of sanctioned post of teachers in the Normal section is reduced to 24 (27-3) including H.M. and the total no. of sanctioned post of teachers in H.S, section is increased to 6 (3+3) (Commerce-4, Math-2). Keeping the total post of teachers is 30."

(12) The then DI vide memo no. 1935/M dated 29.12.2015 had accorded approval to appointment of 07 (seven) no. of Assistant Teachers in H.S. section of the said school. The details of those teachers from memo no. 1935/M dated 29.12.2025 are given as follows:

Sl no.	Name of A.T. with qualification	Designation & group	Date from which approval is effective	Nature of vacancy	Remarks
1.	Smt. Madhumita Bhattacharjee M.Sc. (Eco)	A.T. H.S. Section	27.07.2008 (Notional)	Permanent	Approval of appointment with effect from date of issue of this memo (financially)
2.	Sri Anil Kumar Pandey M.A. (Hindi & History)	-Do-	01.08.2005 (Notional)	-Do-	-Do-
3.	Sri Anthony Dutta M.Com	-Do-	01.04.2013 (Notional)	-Do-	-Do-
4.	Sri Sailendra Kr. Tripathi M.Sc. (Math), B.Ed	-Do-	10.04.2014 (Notional)	-Do-	-Do-
5.	Sri Rajesh Kumar Tripathi M.A. (Hindi)	-Do-	20.12.2012 (Notional)	-Do-	-Do-
6.	Miss Sneha Sen M.A. (English), B.Ed	-Do-	15.04.2007 (Notional)	-Do-	-Do-
7.	Smt. Nabanita Pandey B.A. Hons (English), B.Ed	-Do-	13.10.2012 (Notional)	-Do-	-Do-

(13) Respondent no. 3/DI has submitted that the then DI vide memo dated 29.12.2015 had given approval to appointments of those 07 (seven) Assistant Teachers in H.S. section beyond its sanctioned strength in H.S. section of the school and at that time 06 (six) teaching post in H.S. section had already been saturated as per record. The staff pattern reflects that 04 (four) no. of Assistant Teachers in Commerce and 03 (three) no. of Assistant Teachers in Mathematics are presently working in H.S. section of the school. Thus, at present, total 11 (eleven) no. of Assistant Teachers are working in position in H.S. section though sanctioned teaching post in H.S. section is 06 (six) (Commerce-04, Math-02) in the said school.

(14) It appears that the writ petitioner was appointed as an assistant teacher in Commerce on 09.06.2006, as a part time teacher. He was subsequently reappointed from 01.11.2008, on probation with the understanding that satisfactory service of him would result in pursuant appointment. In the year 2018 the Managing Committee decided to send papers for approval according to seniority and placed the petitioner against a vacancy arising from retirement. According to the petitioner, the vacancy against which he was placed to follow the seniority did not watch with his qualification or subject taught by him. Whereas, another teacher, Mr. Abhijit Saha, notwithstanding not possessing qualification in Commerce subject, was placed against vacancy in that subject, while the writ petition was placed against vacancy in language group. The petitioner's contention is that subject-wise placement of adequately qualified teacher was not followed and that seniority was treated as overriding the subject/group. The petitioner argues that his qualification and staff pattern of the school duly permits his accommodation in Commerce group. The petitioner's further argument is that, in 2005 the sanctioned strength of the school was reorganized so that the higher

secondary section had 6 sanctioned posts – 4 in Commerce and 2 in Mathematics. He also points out that four teachers were already approved in the Commerce group, including a teacher with M.Sc. (Economics) and B.Ed. whose appointment has been approved in 2005. The petitioner thus challenges the findings of the DI, in the impugned order that there was no vacancy/accommodation possible in Commerce. The petitioner says that his initial appointment was virtually against a genuine vacant post, in which he has continuously served since 2006. That, he duly qualifies to be accommodated as a teacher in Commerce in higher secondary section. That, though initially 4 posts were sanctioned for Commerce group in the higher secondary section, teaches have been approved even beyond the sanctioned strength. That, the manner of placing teachers in the group or subject has displaced the petitioner from his field of expert knowledge and his subject, that is Commerce, for no fault of himself. Therefore, despite the number of appointment has already exceeded the sanctioned strength in school the petitioner seeks to be accommodated and approved against a sanctioned post in Commerce, in higher secondary section.

(15) Per contra, it is the version of the State respondent that though the school has 6 sanctioned posts in the higher secondary section, amongst which 4 are in Commerce and 2 in Mathematics, those posts are already filled up, rather has exceeded. That, the school presently has 4 Commerce teachers and 3 Mathematics teachers, that is, total 7 in number, against only six sanctioned posts in higher secondary section. That, all the 7 teachers in higher secondary section have already been approved in 2015 and no further approval can therefore, be granted. Though the petitioner's eligibility in terms of his qualification has not been denied by the DI, his principle ground for

denial of the petitioner's approval is that no sanctioned vacancy is available for the purpose.

(16) The real issue for determination is whether the petitioner's original appointment against a Commerce vacancy and his continuous long service period in the school should result in his approval, despite the present position that approved teachers are holding posts more in number, than the number of the sanctioned posts in higher secondary section, in the school. Or that, approval of his appointment can be defeated merely on the ground that at present the number of teachers working in the higher secondary section exceeds the sanctioned strength, notwithstanding the petitioner's assertion that his initial appointment was made against an actual vacancy and that he has continued to discharge his duties since 23.06.2006.

(17) Notification No. 1691-SE(S)/4A-53/2001 dated 20.9.2001 was issued specifically to address a situation where teachers in a D.A. getting school were working beyond the Government-sanctioned strength. By virtue of the said notification a duly qualified teacher already working in such school, has been permitted and allowed to be placed against vacancies arising within the sanctioned strength. The notification contemplates, inter alia, that in the higher secondary section, preference is to be given to teachers possessing Honours/Master's degree in the subject in which the vacancy arises; that the minimum qualification and prescribed age are to be considered with reference to the time of initial appointment; and that the Managing Committee is required to approach the concerned District Inspector upon occurrence of a vacancy.

(18) The object of the aforesaid notification is significant. It was not intended to create an additional post or to authorise appointments beyond the sanctioned strength. Its purpose was to regulate the

process by which an existing teacher, already working beyond the sanctioned strength, could be accommodated against a sanctioned vacancy, when such vacancy arose. The consideration, therefore, is the existence of a sanctioned vacancy and the eligibility of the teacher for being placed against such vacancy. The provision cannot be construed in a manner whereby a teacher, otherwise eligible and continuously working against a vacancy, is permanently deprived of consideration, merely because the school authority failed to complete the administrative process at the appropriate point of time.

(19) In the present case, the materials disclose that the petitioner was appointed as an assistant teacher in commerce on 9.6.2006 and joined the school on 23.6.2006. His appointment was thereafter followed by a further appointment with effect from 1.11.2008 on probation, with the stipulation that satisfactory service would result in confirmation. The petitioner has accordingly continued in service for a considerable period. The fact that the school authority did not forward his appointment for approval at the appropriate stage is, on the materials before the Court. Such delay or latches amounts to be attributable to the conduct or omission of the school authority and not to any fraud, misrepresentation or suppression on the part of the petitioner himself. Approval of appointment is an administrative consequence of an appointment against a post which is otherwise capable of being recognised within the sanctioned strength. The failure of the management to forward the papers within time to the appropriate authority cannot, in the absence of an express statutory consequence to that effect, operate as an independent forfeiture of the petitioner's substantive claim. A procedural requirement intended to regulate the administrative process cannot ordinarily be elevated into a substantive disqualification, unless the governing provision expressly so provides.

(20) This principle finds support from the decision of the Hon'ble Division Bench of this Court in ***Vinod Kumar Tripathi v. State of West Bengal & Ors., decided on 20 August 2026 [WPA 17731 of 2024]*** , where, while considering Notification No. 1691-SE(S), the Court held that the requirement that the Managing Committee should approach the District Inspector when a vacancy arises, regulates the administrative process and cannot, by itself, extinguish the substantive claim of a teacher who has continuously served for years, particularly where the delay is attributable to the school authority and there is no allegation of fraud or misrepresentation on the part of the teacher. The Court further held that the legality of such appointment is required to be examined with reference to the legal and factual position at the time of appointment and not by subsequently importing a disqualifying condition.

(21) The respondent relies substantially upon the present staff position of the school. It is stated that against 6 sanctioned posts in the higher secondary section, 4 being in commerce and 2 in mathematics, the school presently has teachers in excess of the sanctioned strength, a total 7 of them. It is further pointed out that by Memo No. 1935/M dated 29.12.2015, approval had earlier been accorded to those 7 teachers in the higher secondary section, although the sanctioned strength was only 6. The question before the Court is not whether the school can presently create an additional post for the petitioner. No such direction can obviously be issued. The question is whether the petitioner's claim can be rejected merely by taking into account the present numerical strength, without first determining whether, at the relevant point of time, there existed a sanctioned vacancy against which the petitioner was appointed or against which his service was subsequently eligible to be placed, in terms of Notification No. 1691. The distinction is material. Existence of a sanctioned post at the time

of initial appointment of the petitioner and the number of persons presently occupying posts are two different aspects of the matter. The respondent authority was consequently required to undertake a chronological examination of the sanctioned strength, the vacancies which arose, the appointments made against such vacancies, the subject/group of each incumbent, and the approvals subsequently granted.

(22) The sanctioned strength of the higher secondary section was fixed at 6 posts, comprising 4 posts in commerce and 2 in mathematics, following the conversion of posts by the competent authority in 2002 and 2005. The relevant order dated 12.9.2005 specifically recorded the same. The petitioner's case is that his initial appointment was against the vacancy arising upon the appointment of an existing assistant teacher, Sri Arun Kumar Tewari, as Headmaster, and that he himself was appointed as a commerce teacher. The respondent authority was therefore required to examine whether the vacancy so arising was a sanctioned vacancy in the commerce group and whether the petitioner possessed the requisite qualification for placement against such vacancy at the relevant point of time. The record indicates that the petitioner possesses M.Com. and B.Ed. qualifications. The requirement under Notification No. 1691 concerning a teacher possessing Honours/Master's qualification in the subject in which the Higher Secondary vacancy arises would, prima facie, be satisfied as regards his claim, in that factual context. The school's own records disclose that teachers have subsequently been placed and approved in the higher secondary section, including approval of seven assistant teachers by Memo No. 1935/M dated 29.12.2015, notwithstanding the sanctioned strength of 6. The respondent himself describes those approvals as having been made beyond sanctioned strength. That explanation may ultimately be

relevant to the question of future accommodation, but it cannot, by itself, answer the anterior question as to whether the petitioner's claim, arising from an earlier appointment and an earlier vacancy, was correctly examined.

(23) The decision-making process of the DI is also required to satisfy the elementary requirement of application of mind and reasonableness. The impugned order proceeds upon the present sanctioned strength and records that further approval cannot be accommodated in the higher secondary section. But the critical question whether the petitioner's appointment in 2006 was against a sanctioned vacancy, and whether the vacancy and subject-wise position existing at that time were capable of attracting the mechanism under Notification No. 1691, required a specific determination, which the DI has failed to do in the said impugned order. A conclusion based merely upon the present numerical position, without resolving the vacancy position at the relevant point of time of the petitioner's entry in service, cannot constitute a complete adjudication of the petitioner's claim and is marred with unreasonableness and arbitrariness. The approach adopted by the respondent also appears to overlook the distinction between the validity of the original appointment, the eligibility of the incumbent for placement, and also the availability of a sanctioned post for approval. These are related but distinct questions. The mere fact that the petitioner was initially described as a part-time or temporary teacher does not, by itself, conclude the question whether he was appointed against a vacancy capable of being regularised or approved under the prevailing regulatory mechanism. Equally, long continuance in service by itself does not create a sanctioned post. What is required is a determination of the legal character of the vacancy against which the petitioner was appointed and the applicability of the governing notification to that appointment. None

of the required exercise can be seen to have been done by the respondent/DI in the said impugned order.

(24) In the present case, the petitioner's case cannot, therefore, be rejected solely on the ground that the higher secondary section is presently saturated. The present sanctioned strength is relevant, but it is not the only relevant consideration. The decisive inquiry has to be directed to the vacancy against which the petitioner was initially appointed, the sanctioned strength prevailing at that time, the subject/group to which the vacancy belonged, the petitioner's qualification at the relevant point of time, and the subsequent events by which the sanctioned posts came to be occupied. The Court is not persuaded, therefore, that the petitioner's claim can be rejected by a mere mathematical comparison between the present sanctioned strength and the present number of teachers. Such an approach overlooks the temporal dimension inherent in a claim for approval of appointment. The relevant question is not merely how many teachers are presently working, but against which sanctioned posts and vacancies those teachers came to be appointed or subsequently placed, and in what sequence.

(25) In view of the aforesaid discussion, the impugned order dated 11.3.2024 cannot be sustained. The same does not adequately determine the petitioner's claim with reference to the original vacancy, the sanctioned strength and subject-wise staff pattern prevailing at the relevant time, and the applicability of Notification No. 1691-SE(S)/4A-53/2001 to the petitioner's case. On the contrary, in view of the discussions as made above, the said relevant tests appear to be duly satisfied in case of the petitioner particularly in terms of the notification No. 1691. Hence the petitioner’s eligibility for approval of his service appears to be undoubtedly sacrosanct and

similarly refusal of approval of his service as unreasonable, arbitrary and violative of the settled Rules.

(26) Hence the impugned order of the DI dated 11.03.2024 cannot sustain. Also, that the present writ petition should succeed.

(27) Hence, the writ petition No. WPO 593 of 2024 is allowed with the following directions: -

i. The impugned order of respondent/District Inspector of Schools, Secondary Education, Kolkata dated 11.03.2024 is hereby set aside.

ii. The petitioners being duly entitled for grant of approval of their service, let the respondent/DI issue order to that effect, granting approval of service of the petitioner with effect from the appropriate date.

iii. The respondent/DI shall issue his order as above, within a period of four (04) weeks from the date of communication of this judgment.

(28) Writ petition No. WPO 593 of 2024 is allowed and disposed of.

(29) Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)